

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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DOCUMENT
ELECTRONICALLY FILED
DOC #: _____
DATE FILED: _____ 7/23/2021

JUAN FELIZ,

Plaintiff,

18-CV-05023 (PAE) (SN)

-against-

ORDER

CITY OF NEW YORK, et al.,

Defendants.

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SARAH NETBURN, United States Magistrate Judge:

On July 20, 2021, the Court received a letter from the *pro se* Plaintiff that his inmate account indicates an encumbrance for payment of the filing fee for the appeal he made to the Court of Appeals for the Second Circuit in August 2018. ECF No. 60.

On August 7, 2018, then-Chief Judge Colleen McMahon dismissed this matter due to Plaintiff's alleged failure to file a prisoner authorization form or pay the filing fee. See ECF No. 4. Plaintiff responded in two ways: (1) he timely appealed to the Court of Appeals with an application to proceed *in forma pauperis* ("IFP"), ECF No. 6, and (2) he filed an IFP application with the District Court and a letter stating that the prior failure to file the IFP form was due the prison officials, ECF Nos. 7, 8. On October 2, 2018, the Honorable Paul A. Engelmayer construed Plaintiff's letter as a motion for reconsideration and vacated the August 7, 2018 Order of Dismissal and Civil Judgment, noting that Plaintiff's failure to file the necessary forms had been through no fault of his own. ECF No. 12. That same day, Judge Engelmayer granted Plaintiff's application to proceed IFP. ECF No. 10. On January 16, 2019, the Court of Appeals determined that it lacked jurisdiction over Plaintiff's appeal after the district court had vacated

the judgment and accordingly dismissed the appeal. Feliz v. City of New York, No. 18-255, Doc No. 31 (2d Cir. Jan 16, 2019). The Court of Appeals also denied Plaintiff's motion for leave to appeal IFP as moot given the dismissal of the appeal due to lack of jurisdiction. Feliz, Doc. No. 37 (2d Cir. Jan. 16, 2019). The Court therefore concludes that Plaintiff's appeal fee should be waived.

Accordingly, it is **HEREBY ORDERED** that the Superintendent or other official in charge at Greene Correctional Facility, located in Coxsackie, New York, or any other facility of the New York State Department of Corrections and Community Supervision, REMOVE the encumbrance from the account of Juan Feliz, Department Identification No. 16-A-4711, and not deduct the \$455 appellate filing fee from his account.

The Clerk of Court is respectfully directed to mail a copy of this Order to the *pro se* Plaintiff, and counsel for the City of New York is directed to send this Order to the Superintendent as soon as possible.

This matter shall remain closed.

SO ORDERED.

DATED: July 23, 2021
New York, New York



SARAH NETBURN
United States Magistrate Judge